



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0883]

RIN 1625-AA87

### Security Zone; Houston Ship Channel, Houston, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary security zone for navigable waters extending 600 feet, or to the shoreline, whichever is closer, from the outer edge of the Houston Ship Channel. The security zone is required to protect against the interruption of commerce in relation to the 23<sup>rd</sup> World Petroleum Congress. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Houston-Galveston.

**DATES:** This rule is effective from December 4, 2021, until December 9, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0883 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Robert Cole, Waterways Management Division. Sector Houston-Galveston, U.S. Coast Guard; telephone 281-464-4736, email [Robert.D.Cole@uscg.mil](mailto:Robert.D.Cole@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

CFR	<i>Code of Federal Regulations</i>
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable as immediate action is needed to respond to the threat of interruption to the flow of commercial vessel traffic during the 23<sup>rd</sup> World Petroleum Congress event. The security zone will span from Houston Ship Channel Lights “101” and “102,” continuing north to the Captain of the Port Houston-Galveston permanent Houston, TX security zone.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Houston-Galveston has determined that potential protests beginning December 4, 2021, in response to the 23<sup>rd</sup> World Petroleum Congress, will be a threat to the viability of the Houston Ship Channel. This rule is needed to protect the flow of commerce for the duration of the event.

#### **IV. Discussion of the Rule**

This rule establishes a security zone from December 4, 2021 through December 9, 2021. The security zone will cover all navigable waters extending 600-feet, or to the shoreline, whichever is closer, from the outer edge of the Houston Ship Channel from Houston Ship Channel from Houston Ship Channel Lights “101” at 29°41'58"N, 95°0'24"W, and “102” at 29°42'7"N, 95°0'21"W, continuing north to the permanent Houston Ship Channel security zone defined in 33CFR165.814(a)(1) that begins at a line between 29°45'14" N, 095°05'47" W and 29°45'04" N, 095°05'33" W. The duration of the zone is intended to protect against the interruption of commerce in relation to the 23rd World Petroleum Congress. Entry of into this zone is prohibited except for the following:

- Commercial vessels operating at waterfront facilities within these zones;
- Commercial vessels transiting directly to or from waterfront facilities within these zones;
- Vessels providing direct operational/logistic support to commercial vessels within these zones;
- Vessels operated by the appropriate port authority or by facilities located within these zones; and
- Vessels operated by federal, state, county, or municipal agencies.

No other vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and limited duration of the rule. Standard commercial ship and barge traffic will experience no interruption.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting 6 days that will prohibit entry extending 600 feet, or to the shoreline, whichever is closer, from the outer edge of the Houston Ship Channel from Houston Ship Channel from Houston Ship Channel Lights “101” at 29°41'58"N, 95°0'24"W, and “102” at 29°42'7"N, 95°0'21"W, continuing north to the permanent Houston Ship Channel security zone defined in 33CFR165.814(a)(1) that begins at a line between 29°45'14" N, 095°05'47" W and 29°45'04" N, 095°05'33" W. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS**

## AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T08-0883 to read as follows:

### **§ 165.T08-0883 Security Zone; Houston Ship Channel, Houston, TX.**

(a) *Location.* The following area is a security zone: The waters in vicinity of Galveston Bay, from surface to bottom, extending 600-foot, or to the shoreline, whichever is closer, from the outer edge of the Houston Ship Channel from Houston Ship Channel Lights “101” at 29°41'58"N, 95°0'24"W, and “102” at 29°42'7"N, 95°0'21"W, continuing north to the permanent Houston Ship Channel security zone defined in 33CFR165.814(a)(1) that begins at a line between 29°45'14" N, 095°05'47" W and 29°45'04" N, 095°05'33" W. These coordinates are based on NAD 83.

(b) *Regulations.* (1) Entry of into these zones is prohibited except for the following:

- (i) Commercial vessels operating at waterfront facilities within these zones;
- (ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;
- (iii) Vessels providing direct operational/logistic support to commercial vessels within these zones;
- (iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and
- (v) Vessels operated by federal, state, county, or municipal agencies.

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or designated representative. The Captain of the Port Houston-Galveston's

designated representatives are any personnel granted authority by the Captain of the Port Houston-Galveston to receive, evaluate, and issue written security zone entry permits, or designated on-scene U.S. Coast Guard patrol personnel.

(3) To request permission as required by these regulations contact "Houston Traffic" via VHF Channels 11/12 or by phone at 281-464-4837.

(c) *Enforcement period.* This section will be enforced between December 4, 2021, to December 9, 2021.

Dated: November 30, 2021

Jason E. Smith,

CAPTAIN, U.S. Coast Guard,  
Captain of the Port Houston-Galveston.

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